

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Mark Cooper et al.) Group Art Unit: Not Yet Assigned
Serial No. 09/867,693)
) Examiner: Not Yet Assigned
Filing Date: May 31, 2001)
) Docket No. 003659.00009

For: **LYOPHILIZABLE AND ENHANCED COMPACTED NUCLEIC ACIDS**

PETITION UNDER RULE 47(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants hereby petition the Assistant Commissioner to accept the following statement of facts in lieu of a signed declaration of inventor Maureen Costello. Dr. Maureen Costello refuses to sign the declaration for the above-captioned application.

The petition fee of \$130.00 as required by 37 C.F.R. § 1.17(h) is enclosed herewith. However, if the Patent Office determines that additional fees are due, the Assistant Commissioner is hereby authorized and directed to debit our Deposit Account No. 19-0733.

STATEMENT OF FACTS

1. Ms. Jan Candelaria, manager, administration of Copernicus Therapeutics Inc., sent a copy of the Joint Declaration for Patent Application and Assignment to Dr. Costello by Federal Express on October 8, 2001. The papers sent by Federal Express could not be delivered to Dr. Costello. A copy of the memorandum sent with the Joint Declaration and Assignment to Dr. Costello indicates that the Joint Declaration for Patent Application and Assignment papers were enclosed for Dr. Costello's signature. See Exhibit 1. A Federal Express airbill was affixed to the Federal Express package sent to Dr. Costello on October 8, 2001. See Exhibit 2. The tracking number is indicated as 828748717952 on the top of the airbill. The tracking record of Federal Express package 828748717952 indicates that on October 9, 2001 at 09:56 the customer was not available or business was closed. See Exhibit 3. The package was returned to Ms. Candelaria because it could not be delivered to Dr. Costello. See Exhibit 4.
2. Ms. Candelaria sent a follow-up copy of the Joint Declaration for Patent Application and Assignment to Dr. Costello with a copy of the application on October 12, 2001 in a Federal Express package. See Exhibit 5. Ms. Candelaria included a memorandum in the Federal Express package. See Exhibit 6. The memorandum states that the Federal Express package contains a copy of the application with the signature pages. The Federal Express detailed tracking results indicate that the Joint Declaration for Patent Application, Assignment, and Patent Application papers were delivered on October 13, 2001 at 11:12. See Exhibit 7.
3. Dr. Costello did not return the executed documents to Ms. Candelaria.
4. I, Michelle Holmes-Son, spoke with Dr. Costello on November 12, 2001. I told Dr. Costello that I had a Federal Express tracking record that indicated that she had received the

Patent Application, Joint Declaration for Patent Application and Assignment papers for the above-mentioned application. I then asked her if she would sign the papers. Dr. Costello informed me that she “wants no part of it” and will “not sign it.” She also informed me that she had previously informed Robert Moen, President and CEO of Copernicus Therapeutics, Inc., and Mark Cooper, Senior Vice President, Science and Medical Affairs of Copernicus Therapeutics, Inc., that she will not sign the papers. A copy of my contemporaneous notes of the telephone conversation with Dr. Costello is attached. See Exhibit 8.

POINT TO BE REVIEWED

The point to be reviewed is whether the above-mentioned application should be accepted as complete even though one of the inventors, Maureen Costello, refuses to sign the Joint Declaration for Patent Application.

ACTION REQUESTED

Applicants request that this petition under 37 CFR 1.47 be accepted in lieu of Dr. Costello’s signed inventor’s declaration and that the application be considered as fulfilling the requirements for filing a nonprovisional application.

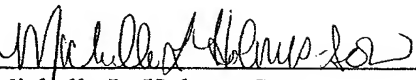
STATEMENT OF LAST KNOWN ADDRESS

The last known address for Dr. Costello is:

102 North Mansfield Avenue
Margate City, NJ 08402

Respectfully submitted,

Date: November 13, 2001

By: 
Michelle L. Holmes-Son
Registration No. 47,660

Banner & Witcoff, Ltd.
1001 G Street, NW
Washington, DC 20001
202-508-9100

List of Exhibits

- Exhibit 1. October 8, 2001 memorandum from Jan Candelaria to Dr. Maureen Costello.
- Exhibit 2. Federal Express airbill for October 8, 2001 package.
- Exhibit 3. Tracking record of October 8, 2001 Federal Express package.
- Exhibit 4. Federal Express airbill of undelivered October 8, 2001 package.
- Exhibit 5. Federal Express airbill for October 12, 2001 package.
- Exhibit 6. October 12, 2001 memorandum from Jan Candelaria to Dr. Maureen Costello.
- Exhibit 7. Tracking record of October 12, 2001 Federal Express package.
- Exhibit 8. Notes of November 12, 2001 telephone conversation between Dr. Maureen Costello and Michelle Holmes-Son.



MEMORANDUM

DATE: October 8, 2001
TO: Maureen Costello
FROM: Jan Candelaria
SUBJECT: Joint Declaration and Assignment Signatures for Patent Application

Attached are copies of the Joint Declaration and Assignment pages for your signature. Please sign and return at your earliest convenience. Thanks.

Jan

FedEx USA Airbill

Tracking Number

8287 4871 7952

0215

SPH13

Sender's Copy

1 From Please print your print name

Date 10/8/01 Sender's FedEx Account Number 1975-6305-2

Sender's Name JAN CALDELLAIA Phone (216) 231-0227

Company COPERNICUS THERAPEUTICS INC

Address 11000 CEDAR AVE STE 145

City CLEVELAND

State OH ZIP 44106

2 Your Internal Billing Reference

First 24 characters will appear on invoice.

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3 To

Recipient's Name Margaret Costello Phone (609) 822-7795

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☐ RESTRICTIONS

☐ HOLD Saturday

☐ at FedEx location

☐ RESTRICTIONS

☐ at FedEx location

☐ Does this shipment contain dangerous goods?

☐ No ☐ Yes

☐ As per attached Shipper's Declaration

☐ Dry Ice

☐ Cargo

☐ Airfreight

☐ Only

☒ Payment Bill to:

☒ Sender ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

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1 216 02 \$.00

Total Packages 1 Total Weight 216 OZ Total Declared Value* .00

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By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

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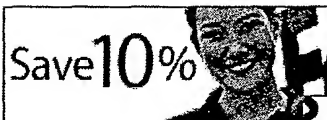
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Reference Number
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Delivered To
Delivery Location MARGATE CITY NJ
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On FedEx vehicle for delivery EGG HARBOR TOWNSHIP NJ	10/09/2001 09:02	
Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/09/2001 08:39	
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Held at Sort Facility INDIANAPOLIS IN	10/09/2001 02:47	
Arrived at Sort Facility INDIANAPOLIS IN	10/09/2001 00:09	
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Picked up by FedEx BEDFORD HEIGHTS OH	10/08/2001 17:07	

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Sender's Name JAN CANDELARIA Phone (216) 231-0227

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City CLEVELAND State OH ZIP 44106

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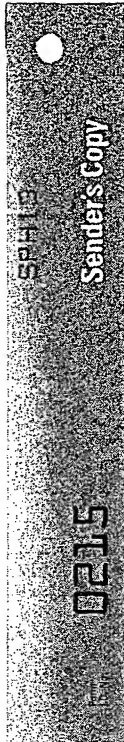
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5 Packaging

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6 Special Handling

☒ SATURDAY Delivery ☐ SUNDAY Delivery ☐ HOLD Weekday ☐ HOLD Saturday

7 Payment Bill to: ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

Total Packages 1 Total Weight 1.16 \$ 00 Total Declared Value*

8 Release Signature Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

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MEMORANDUM

DATE: October 12, 2001
To: Maureen Costello
FROM: Jan Candelaria
SUBJECT: Joint Declaration and Assignment Signatures for Patent Application

Sorry to send a second copy but the patent attorney said I should have included a copy of the application with the signature pages. Please call if you have any questions. 216-231-0227

Jan



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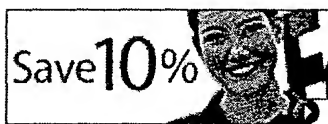
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Reference Number
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Delivered To Recipient
Delivery Location MARGATE CITY NJ
Delivery Date/Time 10/13/2001 11:12
Signed For By M.COSTELLO
Service Type Priority Pak

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Package status EGG HARBOR TOWNSHIP NJ	10/13/2001 08:44	Package not due for delivery
Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/13/2001 08:44	
Left FedEx Ramp PHILADELPHIA PA	10/13/2001 08:16	
Held at Sort Facility INDIANAPOLIS IN	10/13/2001 03:17	
Left FedEx Sort Facility INDIANAPOLIS IN	10/13/2001 03:15	
Left FedEx Sort Facility INDIANAPOLIS IN	10/13/2001 03:15	
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Left FedEx Origin Location BEDFORD HEIGHTS OH	10/12/2001 21:19	
Picked up by FedEx BEDFORD HEIGHTS OH	10/12/2001 17:33	

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Maureen Costello
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will not sign it
told Robert Moen &
Mark Cooper she will
not sign